IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1046

JOHN J. GIRARD, et al.,
Petitioners,

v.

GORDON D. SCHWEITZER, Sheriff of the City of St. Louis,
Successor to Benjamin Goins,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

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STATEMENT OF THE CASE

The statement of the case contained in the petition for a Writ of Certiorari does not include all that is material to the consideration of the question presented in this cause. Rather than supplement each and every omission in the petitioners' statement of the case, and in an effort to present this Court with a clear and accurate statement of all that is material to the consideration of the question presented, respondent shall set forth his own concise statement of the case.

The history of this case indicates that petitioners, all members or officers of Brewery Drivers and Helpers Local Union No. 133 of St. Louis, affiliated with the International Brotherhood of Teamsters, etc., were found guilty of criminal contempt of Court by the Circuit Court of the City of St. Louis, State of Missouri, on June 24, 1976. The convictions were fully reviewed by the Missouri Court of Appeals, St. Louis District, by means of Preliminary Writs of Habeas Corpus and the convictions affirmed by opinion of that Court filed on August 30, 1977, found reported as *State ex rel. Girard, et al., Petitioners, v. Raymond T. Percich, Sheriff of the City of St. Louis, Respondent*, 557 S.W. 2d 25 (Mo. App. 1977).

Petitioners thereafter sought habeas corpus from the Supreme Court of Missouri. That Court on October 12, 1977, issued orders staying issuance of the mandate of the Missouri Court of Appeals by which the convictions had been affirmed, and considered petitioners' applications on written briefs in support and opposition thereto. On December 19, 1977, the Missouri Supreme Court denied each of petitioners' Applications for Habeas Corpus.

Petitioners then sought habeas corpus in the United States District Court for the Eastern District of Missouri. On January 11, 1978, the Honorable James H. Meredith, Chief Judge, entered a Memorandum Opinion and Order *Girard v. Goins*, 442 F. Supp. 1250 (E.D. Mo. 1978) by which that Court also denied habeas corpus and, in effect, affirmed the convictions.

On appeal to the United States Court of Appeals for the Eighth Circuit, that Court held that the punishment of between 10 and 40 days imprisonment did not render the convictions "serious" so as to require trial by jury. However, that Court held that fines in excess of $500 could not properly be imposed in the circumstances of the case absent the opportunity of a trial by jury. The Federal Appeals Court remanded the case

to the District Court for entry of an appropriate order (A. 43). On June 26, 1978, the District Court entered an Order pursuant to the mandate and judgment of the Eighth Circuit directing that habeas corpus should issue as to the petitioners unless, within 90 days of said order, the Circuit Court of the City of St. Louis either reduced the fines against the petitioners to an amount not exceeding $500 or grant to petitioners a new trial with a jury. The Order of the District Court further directed petitioners to appear before the Circuit Court of the City of St. Louis for proceedings consistent with the mandate and judgment of the Eighth Circuit (A. 28).

On July 18, 1978, the Circuit Court of the City of St. Louis entered an order granting a remission of the fines theretofore assessed, thereby limiting the fine against each petitioner to $500.

On the same day, petitioners filed new Applications for Habeas Corpus with the Missouri Court of Appeals, St. Louis District, alleging that the Circuit Court of the City of St. Louis was without authority to reduce the fines originally assessed on June 24, 1976 in order to comply with the orders obtained by petitioners in the Federal Courts. Petitioners claimed that the State Court had lost all jurisdiction over the case because more than 31 days had passed since entry of the original judgment. The Missouri Court of Appeals denied petitioners' Applications (A. 30).

Writs were then sought by each petitioner from the Supreme Court of Missouri in applications based upon the same grounds as had been raised in the Missouri Court of Appeals. After receipt of briefs in support and opposition to the applications, the Missouri Supreme Court also denied habeas corpus (A. 31).

Petitioners then filed an Amended Motion to Stay and Amended Application for Issuance of Writs of Habeas Corpus with the District Court of the United States for the Eastern District of Missouri, again alleging that the Circuit Court of

the City of St. Louis had no authority to comply with the mandate of the Eighth Circuit Court of Appeals and the Order of the District Court of the United States with regard to the reduction of the fines assessed against petitioners. On September 25, 1978, the District Court denied the Petitions for Habeas Corpus and further denied petitioners' request for certificates of probable cause (A. 32-36).

On September 25, 1978, petitioners filed a Notice of Appeal to the Eighth Circuit from the Order of the District Court denying habeas corpus and further filed a Motion to Stay execution of the sentences (A. 37, 38). On September 29, 1978, the Eighth Circuit entered its judgment denying petitioners' application for a certificate of probable cause and further denying petitioners' Motion for Stay (A. 39).

On October 2, 1978, petitioners filed with the Honorable Mr. Justice Blackmun an Application for Stay of Confinement as to the sentences imposed, which Application was denied by Order entered on October 3, 1978.

On November 3, 1978, all petitioners herein completed service of the sentences respectively imposed upon them (A. 3).

The Order of the Eighth Circuit Court of Appeals giving rise to this Petition for Certiorari is a denial by that Court of Petitioners' request for a certificate of probable cause to permit an appeal of the District Court's Order of June 2[illegible], 1978 (A. 39-40). The District Court's Order (A. 32-36) clearly sets forth the basis for that Court's rulings on petitioners' arguments and recites the matters before the Court giving rise to this proceeding.

This matter has been reviewed by the Missouri Court of Appeals, St. Louis District twice, by the Missouri Supreme Court twice, by the U. S. District Court twice, by the Eighth Circuit twice (all exclusive of rehearing motions, etc.), and also has been before the Circuit Justice on Motion to Stay.

QUESTION PRESENTED

Are the Orders of the Circuit Court of the City of St. Louis in response to the mandate and judgment of the United States Court of Appeals for the Eighth Circuit and the Order of the United States District Court for the Eastern District of Missouri, in conformity with the legal principle determined by this Court in *Taylor v. Hayes*, 418 U.S. 488 (1974)?

REASONS FOR NOT GRANTING THE WRIT

Even a casual reading indicates that the present Petition for a Writ of Certiorari sets forth no basis whatsoever for review of this case by our nation's highest Court. Respondent recognizes that a response to the present Petition may do no more than dignify arguments which are already patently spurious. Respondent has filed this brief out of an abundance of caution and in an effort chiefly to state reasons for denial of the writ in order to disperse the smokescreen which petitioners have created.

The first question petitioners claim is presented in this cause (as indicated by their "Questions Presented") is based upon the premise that the Circuit Court of the City of St. Louis lost all jurisdiction over the contempt proceedings thirty days after entry of the Order finding petitioners guilty. Petitioners, however, completely omit any discussion of this "question" in their "Reasons for Granting the Writ," and thus have apparently abandoned this so-called basis for relief.

Even though petitioners have abandoned this "question presented," respondent sets forth hereafter but a few of the many arguments and authorities which clearly and without question refute petitioners' position.

The present Petition for a Writ of Certiorari is derived from Applications for Writs of Habeas Corpus filed by petitioners in the United States District Court pursuant to Title 28 U. S. Code §2254. (Petitioners did not bother to include the Petitions in the Appendix.) Habeas corpus in the Federal Court is available to State Court prisoners *only* on the ground that petitioners were in custody in violation of the Constitution or laws or treaties of the United States. The question of the mechanics of the State Court reducing the fines assessed against petitioners in this case so as to comply with the Federal Court's orders obtained by petitioners is a question, not of Constitutional or federal law, but only of Missouri state law. Furthermore, this identical argument was rejected by both the Missouri Court of Appeals and the Missouri Supreme Court. It is not the province of a federal habeas court to re-examine questions of state law. *Rose v. Hodges*, 423 U. S. 19 (1975).

Any federal question of the power and jurisdiction of the Circuit Court of the City of St. Louis to affect a reduction of the fines assessed against petitioners was put to rest by this Court in the case of *Taylor v. Hayes*, 418 U.S. 488 (1974).

The second question petitioners claim is presented to this Court—and the only question argued by petitioners—is equally lacking in merit. Stripped of all erroneous and misleading references to any "evidentiary hearing," the question petitioners are actually seeking to raise is the question of the *sufficiency* of the evidence before the State Court to sustain the State Court conviction. Nowhere have petitioners ever indicated to the District Court, to the Eighth Circuit, nor to this Court, the factual issue for determination before the habeas Court which required an evidentiary hearing. Rather, petitioners have complained of the evidence in the Trial Court. Certainly, a question of the sufficiency of the evidence does not present a "special and important reason" that would warrant review by the United States Supreme Court. Moreover, it is established without exception that federal habeas corpus relief under Title 28 U. S. Code §2254 is not available to determine whether there was sufficient evidence to sustain a State Court conviction. *Butts v. Wainwright*, 575 F. 2d 576 (5th Cir. 1978); *Mapp v. Warden, New York State Correctional Institution for Women*, 531 F. 2d 1167 (2nd Cir. 1976); *White v. Wyrick*, 530 F. 2d 818 (8th Cir. 1976).

Petitioners do not in any wise demonstrate that the instant Petition presents to the Court a case in which certiorari should be granted for any of the reasons which are either specifically set forth, or implicit in the provisions of Rule 19 of this Court.

CONCLUSION

The Petition for a Writ of Certiorari is totally void of any basis for bringing before this Court for review the Order of the Court of Appeals denying petitioners' Application for a certificate of probable cause to permit an appeal. Therefore, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Certificate of Service

I hereby certify that on this 24th day of January, 1979 three copies of the Brief in Opposition to Petition for a Writ of Certiorari were personally delivered to Jerome J. Duff, Esq., 1139 Olive Street, Suite 302, St. Louis, Missouri 63101, Counsel for Petitioners. I further certify that all parties required to be served have been served.

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